

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1059 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHARAT ALIAS BHIKHA

LALLUBHAI MARVADI

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/04/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

State has preferred this appeal against the order of acquittal recorded by Addl. City Sessions Judge, Court No.17, Ahmedabad, in Sessions Case No.74 of 1994 on 21-7-1997.

#. The deceased-Lilaben, mother of three children, after 14 years of married life, committed suicide on the allegation of demand of Rs.10/- by the accused-her husband. Learned Addl. Sessions Judge has discussed the dying declaration in para 20 of the judgment and has come to the conclusion that there is no reason to disbelieve the dying declaration recorded before the Executive Magistrate. Learned Addl. Public Prosecutor, Mr. Patel stated that in view of this, the accused ought to have been convicted. It is required to be noted that in the dying declaration, nothing is stated by the deceased against her husband so as to raise any inference against the accused that the accused instigated her to commit suicide. There is nothing to indicate, i.e. either the cruelty, either physical or mental, by her husband-the respondent accused so as to constitute cruelty within the meaning of Sec.498 of Indian Penal Code. Only statement made by her is to the effect that her husband demanded a sum of Rs.10/- from her which she did not have and therefore, her husband got enraged and abused her. It is after this incident that her husband left the room and she locked the room from inside and after sprinkling kerosene on her person, she committed suicide by burning herself by lighting a match stick. On hearing the cries, others came there. Evidence also reveals that her husband immediately came and he also sustained burn injuries whiel saving her for which, he was treated in the hospital. In the complaint recorded by the Police, some improvements are noted. Suffice it to say that, the learned Judge has come to the conclusion that there is no evidence indicating cruelty at the hands of her husband which can be said to be so strong which would instigate her to commit suicide. There is no other evidence connecting the accused with the crime.

#. This Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been

acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. In view of the above observations and looking to the facts and circumstances of the case, we are of the view that this appeal is required to be rejected and is accordingly rejected.

radhan/